



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Metal Products, Inc.

File: B-244543

Date: July 15, 1991

Kevin Connors for the protester,
Charles W. Morrow, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Bidder's failure to complete Certificate of Procurement Integrity incorporated in an invitation for bids by an amendment renders the bid nonresponsive because the certificate imposes material legal obligations upon the bidder to which it is not otherwise bound by merely acknowledging the amendment.

DECISION

Consolidated Metal Products, Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAA03-91-B-0002, issued by the Department of the Army, Pine Bluff Arsenal, Pine Bluff, Arizona, for M216 bursters. The bid was rejected because Consolidated failed to complete the Certificate of Procurement Integrity included in the IFB.

We dismiss the protest.

On October 11, 1990, the Army issued the IFB, and by amendment No. 0001, issued November 13, 1990, the Army incorporated the Certificate of Procurement Integrity as required by Federal Acquisition Regulation (FAR) §§ 3.104-10(b), 52.203-9 (FAC 90-2). Bid opening was on November 22. On June 6, 1991, Consolidated was apprised that its bid had been rejected as nonresponsive because it failed to complete the certificate and that award had been made to a higher priced bidder.^{1/} Consolidated protests that its bid was improperly determined to be nonresponsive, since it acknowledged amendment No. 0001, which evidenced its intent to accept all provisions in that amendment.

^{1/} Award had been made on February 26, 1991.


This case is virtually identical to that in Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. _____, 91-1 CPD ¶ 342, where we found a bid, which only acknowledged an amendment incorporating the certificate but which did not complete the certificate, must be rejected as nonresponsive. As explained in Mid-East, the Certificate of Procurement Integrity imposes substantial additional legal requirements upon the bidder materially different from those to which the bidder is otherwise bound, either by its offer or by law; for example, to become familiar with the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (West Supp. 1990), and to make full disclosures of any possible violations of the Act. Moreover, the Act and the certificate expressly require a separately signed certification agreeing to comply with various provisions of the Act as a condition of award. As a result of the substantial additional legal obligations imposed by the certificate, and given the express requirement for the certification to be separately signed, omission from a bid of a signed certificate leaves unresolved a bidder's legal commitment to comply with the material requirements of the certificate, and requires that the bid be rejected as nonresponsive. See also FAR § 14.404-2(m) (FAC 90-3).

Because, as in Mid-East, Consolidated neglected to submit a completed procurement integrity certificate, we find that the procuring agency properly rejected Consolidated's bid as nonresponsive, since its acknowledgement of the amendment, in itself, did not represent an unequivocal commitment to comply with the requirements of the certificate. The fact that the amendment adding the certificate and bid opening occurred prior to December 1, 1990 (the effective date of this requirement) does not change this result, since the Act prohibited the "award" of any contract valued at more than \$100,000 (as was the case here) after December 1, 1990, to any firm that failed to complete the certificate, 41 U.S.C. § 423(e), and the agency's inclusion of the certificate here was to assure compliance with the Act when it became effective. See Mid-East Contractors, Inc., B-242435, supra.

Consolidated also complains that the wrong certificate was included in the IFB. However, this alleged solicitation deficiency was apparent on the face of the IFB and was required to be protested prior to bid opening in order to be

considered timely under our Bid Protest Regulations. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(1)). Consolidated's protest on this point, filed over 7 months after bid opening, is untimely and not for consideration.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel